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09/181,533	10/28/1998	ADNAN SHENNIB	ISM/003	1018

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DONALD R. GREENE  
POST OFFICE BOX 12995  
SCOTTSDALE, AZ 852672995

EXAMINER

ENSEY, BRIAN

ART UNIT	PAPER NUMBER
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2643

DATE MAILED: 10/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/181,533

Applicant(s)

SHENNIB, ADNAN

Examiner

Brian Ensey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 26-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election without traverse of claims 26-32 in Paper No. 5 is acknowledged.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 7, 8, 10, 15, 21 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Epley, U.S. Patent No. 4,756,312.

Regarding claim 1, Epley discloses a miniature hearing aid device (10) adapted to be positioned substantially in the ear canal of the wearer, comprising: electrical circuit means (14) for receiving and processing incoming signals representative of audio signals and converting them to an output for exciting the tympanic membrane of the wearer; a miniature magnetically controlled latchable reed switch assembly (22) for controlling at least one of activation and deactivation of the hearing device or an operating parameter of the hearing device; said miniature reed switch assembly including: a reed switch including first and second reeds providing electrical contacts spaced apart by an air gap, respective lead wires electrically connected to said first and second reeds and to said electrical circuit means, and a latching magnet (95) directly affixed to one of said first reed or the lead wire associated with said first reed, said latching magnet having a magnetic field of sufficient strength to maintain said first and second reeds together in electrical contact after said air gap is closed by an externally applied magnetic field of

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suitable magnitude, polarity and proximity, but of insufficient strength to bring said first and second reeds together in electrical contact while said air gap exists (See Figs. 1 and 5 and col. 6, line 63 to col. 7, line 35 and col. 10, lines 30-42).

Regarding claims 7 and 8, Epley further discloses a reed switch assembly positioned for remote control by a control magnet wielded by the wearer including a control magnet supplied with said device and including means to prevent insertion of said control magnet into the ear canal (See Figs. 1 and 6-11).

Regarding claim 10, Epley further discloses the reed switch assembly is a power switch for activation and deactivation of said hearing device (See Fig. 5 and col. 10, lines 30-42).

Regarding claim 15, Epley discloses a miniature hearing aid device (10) adapted to fit within or be surgically implanted adjacent to the ear canal of a human user and to be remotely controlled for powering the device on and off and/or for adjusting an operating parameter of the device to enhance the hearing of the user in response to a received incoming signal to the device representative of an audio signal, said device comprising a miniature magnetically controlled latchable reed switch assembly (22) to enable the user to remotely control the device by use of an external magnet; said reed switch assembly including a reed switch having at least a pair of reeds spaced apart by an air gap, and a latching magnet (95) directly affixed to one of said reeds or to a leadwire associated therewith for holding said reeds together in electrical contact after being closed by the user's passage of said external magnet in close proximity thereto, but of inadequate magnetic field strength to close said air gap without aid; whereby once said reeds are closed, the latching magnet prevents separation thereof until said reeds are exposed to an external magnetic field of sufficient strength and opposite polarity to the field of said latching magnet (See Fig. 1 and col. 6, line 63 to col. 7, line 35 and col. 10, lines 30-42).

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Regarding claim 21, Epley discloses a method of remotely activating and deactivating a miniature hearing device, comprising the steps of: implementing the hearing device with a miniature magnetically controlled latchable reed switch assembly to apply and remove battery power to the device including a reed switch having at least a pair of reeds spaced apart by an air gap and a latching magnet directly affixed to one of said reeds or to a leadwire associated therewith for holding said reeds together once closed by an external magnetic field of appropriate magnitude and polarity, but the latching magnet itself having inadequate magnetic field strength for unaided closure of said reeds spaced apart by said air gap, and providing a control magnet means capable of generating a magnetic field of said appropriate magnitude for use by the wearer by placement in close proximity to said reed switch assembly (i) with one polarity when the hearing device is to be activated by closing said reeds to apply battery power to the device, so that the latching magnet prevents said reeds from being subsequently separated, and (ii) with the opposite polarity when the hearing device is to be deactivated by overcoming the latching force of the latching magnet and opening said reeds to remove battery power to the device (See Fig. 1 and col. 6, line 63 to col.7, line 35 and col. 10, lines 30-42).

Regarding claim 22, Epley further discloses fashioning the control magnet means to fit near the opening of the ear for convenience of use by the wearer when the control magnet means is to be placed in close proximity to said reed switch assembly, but with a stopper to prevent the control magnet means from entering the ear canal (See Figs. 6-8).

***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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5. Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Epley as applied to claim 1 above, and further in view of Posey, U.S. Patent No. 5,293,523.

Regarding claims 2-5, Epley does not expressly disclose the latching magnet is directly affixed to said first reed or wedged between ferromagnetic wires, leadwires are ferromagnetic, or latching magnet is directly affixed to said ferromagnetic lead wire connected to said first reed. However, Posey teaches a latching magnet mounted on a reed or any varying distances therefrom or any varying positions along the reed (See col. 1, line 66 to col. 5, line 9). It would have been obvious to one of ordinary skill in the art at the time of the invention to place the latching magnet of the combination on the reed, on the ferromagnetic leads, wedged between the wires or at any varying distances as long as the location is within the magnetic sensitivity.

6. Claims 6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Epley as applied to claim 1 above, and further in view of Grad, U.S. Patent No. 5,811,896.

Regarding claim 6, Epley does not expressly disclose the reed switch is encapsulated in a hermetically sealed casing. However, this construction is well-known and Grad teaches a reed switch which is sealed in a glass tube together with an inert gas. It would have been obvious to one of ordinary skill in the art at the time of the invention to seal the reed switch to prevent corrosion or contamination due to dust or cerumen when used in the hearing aid.

Regarding claim 9, Epley does not expressly disclose the control magnet is an electromagnet. However, Grad teaches the control magnet may be an electromagnet (See col.5, line 63 to col. 6, line 3). It would have been obvious to one of ordinary skill in the art at the time of the invention to use an electromagnet as a control magnet for greater flexibility in control devices and so that a permanent magnet is not required in the control device.

7. Claims 11- 13, 16, 20, 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Epley.

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Regarding claims 11 and 12, Epley discloses a reed switch assembly connected to control an operating parameter of the device and further the assembly comprises a plurality of reed switches (See Fig. 5 and col. 10, line 30 to col. 11, line 21). Epley does not expressly disclose the reed switches are latchable reed switches. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to use latchable reed switches for controlling operating parameters so that the control device does not have to be maintained in the vicinity of the reed switch for the entire time the adjustments are made.

Regarding claim 13, Epley does not expressly disclose the latching magnet has a protective coating. However, magnets with protective coating are well known in the art. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the latching magnet with a protective coating to prevent corrosion from moisture.

Regarding claims 16 and 20, Epley discloses a magnetically controlled latchable reed switch assembly controls at least one of activation/deactivation of the device. Epley does not expressly disclose the switch assembly controls device operating parameters including adjustment of frequency response of the device to said received incoming signal representative of an audio signal and adjustment of loudness of the processed received incoming signal as output vibrations of said hearing device to a vibratory structure of the ear of the user or additional reeds switches being positioned for concurrent control of activation of the device and adjustment of one of said operating parameters. However, Epley does teach a reed switch assembly for operating the loudness of the incoming signal and it would have been obvious to one of ordinary skill in the art at the time of the invention to provide latchable switch units positioned for concurrent operation of other control parameters including frequency for ease of adjustment by the user.

Regarding claims 24 and 25, Epley does not expressly disclose implementing said magnetically controlled latchable reed switch assembly with an additional pair of reeds spaced apart by an air gap, to enable remote control of the loudness of the output of the hearing device or remote control of the frequency response of the hearing device to received incoming signals representative of audio signals by use of said control magnet means by the wearer. However, Epley does teach a reed switch assembly for operating the loudness of the incoming signal and it would have been obvious to one of ordinary skill in the art at the time of the invention to provide latchable switch units positioned for concurrent operation of other control parameters including frequency for ease of adjustment by the user.

8. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Epley as applied to claim 1 above, and further in view of Posey, U.S. Patent No. 5,233,322.

Regarding claim 14, Epley does not expressly disclose the reed switch assembly is protectively potted. However, Posey teaches a reed switch protectively potted (See Abstract). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a protective potting for the reed switch assembly to seal the reed switch to prevent corrosion and physical damage from mechanical shock when used in a hearing aid.

9. Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Epley as applied to claim 15 above, and further in view of Posey, U.S. Patent No. 5,293,523.

Regarding claims 17-19, Epley discloses circuit means for processing the received incoming signal, and lead wires connected to respective ones of the reeds and to predetermined points of the electrical circuit means exists (See Figs. 1 and 5 and col. 6, line 63 to col. 7, line 35 and col. 10, lines 30-42). Epley does not expressly disclose leads wires are ferromagnetic, the latching magnet is directly affixed to one of said reeds, or the latching magnet is directly affixed to a leadwire associated with one of said reeds. However, Posey teaches a ferromagnetic reed



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switch with a latching magnet mounted on a reed or any varying distances therefrom or any varying positions along the reed (See col. 1, line 66 to col. 5, line 9). It would have been obvious to one of ordinary skill in the art at the time of the invention to place the latching magnet of the combination on the reed, on the ferromagnetic leads, wedged between the wires or at any varying distances as long as the location is within the magnetic sensitivity.

10. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Epley as applied to claim 21 above, and further in view of Grad, U.S. Patent No. 5,811,896.

Regarding claim 23, Epley does not expressly disclose fabricating the control magnet means in the form of a bar magnet having opposite polarities at its ends so that the control magnet means is conveniently inverted and placed near the ear by the wearer for powering the device on and off. However, Grad teaches the control magnet in the form of a bar magnet (See col. 5, lines 63-67). It would have been obvious to one of ordinary skill in the art at the time of the invention that the shape of the control magnet is cosmetic and to provide the control magnet in a variety of forms for easy manufacturability and customer appeal.

### ***Response to Arguments***

11. Applicant's arguments with respect to claims 1-25 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Ensey whose telephone number is 703-305-7363. The examiner can normally be reached on Mon-Fri: 8:00 - 4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz can be reached on 703-305-4708. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**Or faxed to:**

(703) 872-9314, for formal communications intended for entry and for informal or draft communications, please label "PROPOSED" or "DRAFT".  
Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4700.

BKE  
October 2, 2003

  
CURTIS KUNTZ  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600